universally admitted that over them the territorial sovereign retains complete jurisdiction.[8] The French rule of practice is for that sovereign to refuse to exercise it over acts relating solely to the internal discipline of such vessels and offenses committed by one member of the crew against another without disturbing the peace of the port.[9] This rule, though not universal, is growing in favor and is embodied in numerous treaties.[10] But acts of the territorial legislature intended to apply to such vessels must be followed.[11] So on any view a recent case in which the master of a Norwegian ship in Manila Bay was fined by a Philippine court because of conditions on board, seems right.[12] *United States* v. *Bull*, 5 Am. J. Int. Law, 242 (Phil. Is., Sup. Ct., Jan. 15, 1910).

The law concerning jurisdiction over foreign vessels in the littoral seas is still in the making. A public vessel will there undoubtedly have the exemptions it enjoys in port; but as to merchantmen the publicists are in conflict. By some it is said that the vessel is subject to the same jurisdiction as if in port.[13] By others it is urged that the vessel is to be regarded as in no way subject to the jurisdiction of the littoral state, though bound to abide by its navigation regulations.[14] And there is the intermediate position that, while as a general rule a vessel is subject to the jurisdiction of the littoral state, one merely passing through is subject only in respect of acts which violate the interests of that state or of its subjects outside the vessel.[15] These numerous distinctions between ports and littoral seas, between vessels at anchor and those passing through, between offenses taking effect on board and those taking effect outside, seem difficult to justify on principle as affecting jurisdiction. Despite the objection of certain theoretical writers every nation does claim the rights of a sovereign over its littoral seas.[16] And there has been no evidence of an intent to relinquish jurisdiction, but of quite the contrary.[17] So the jurisdiction of the littoral state should be admitted and to it should be left the determination of the rare cases of its exercise as a matter of expediency, a system that has worked well enough as to ports.

PURCHASE FOR VALUE AND WITHOUT NOTICE OF EQUITABLE INTERESTS. — It is the accepted doctrine in England that as between

[8] The rule of practice in France is sometimes there stated to be based on lack of jurisdiction over the acts. But that this is not true is shown by the fact that the French port authorities will exert jurisdiction when asked. See ORTOLAN, DIPLOMATIE DE LA MER, 223, 224.

[9] See 1 CALVO, LE DROIT INTERNATIONAL, 555.

[10] Wildenhus's Case, 120 U. S. 1. See HALL, INTERNATIONAL LAW, 3 ed., 200.

[11] Patterson *v.* Bark Eudora, 190 U. S. 169. See 15 HARV. L. REV. 411.

[12] An objection to lack of jurisdiction over the subject-matter of the offense on the ground that the failure to provide suitable appliances and the subsequent voyage were outside Philippine waters, was answered by saying that the offense was a continuing one and existed during the trip up Manila Bay.

[13] See HALL, INTERNATIONAL LAW, 3 ed., 202.

[14] See IMBART-LATOUR, LA MER TERRITORIALE, 307.

[15] RESOLUTIONS OF THE INSTITUTE OF INTERNATIONAL LAW, 1894, Art. 6, 7, 8.

[16] The right of innocent passage of foreign vessels through such waters seems conceded. See OPPENHEIM, INTERNATIONAL LAW, 243; HALL, INTERNATIONAL LAW, 202.

[17] See the Act of Parliament, ST. 41 & 42 VICT. c. 73, following the decision in the case of the Franconia, The Queen *v.* Keyn, 2 Ex. D. 63.

conflicting equities that which is prior in time should prevail. This rule is undoubtedly sound when the rights of both parties are against the same person. Thus if a trustee sells without conveying the legal title to a third party who pays value without notice, the *cestui* will be preferred; for since the rights of each are mutually exclusive so far as the possibility of equitable relief against the trustee is concerned, it is only fair that he who first secured his right should prevail.[1] But the English cases do not stop here. Thus if one who holds an equity of redemption in trust assigns it to a purchaser for value without notice, the latter will be postponed to the *cestui*.[2] Yet here the *cestui's* right, though earlier in date, would only be against the fraudulent assignor, whereas, by the assignment, the purchaser would secure a direct right against the legal owner. Hence these rights would not be mutually exclusive, because they would be against different persons, and there seems no affirmative reason why the purchaser, who alone would have a direct right against the owner of the *res*, should hold it subject to the *cestui's* right. Similarly, the general rule in England that the assignee of a chose in action takes subject to all prior equities against the assignor is an example of the same doctrine.[3]

In a recent English case, persons having a power of appointment among children over an equitable interest fraudulently executed this power in favor of one son who thereupon sold his interest to a purchaser for value without notice. *Cloute* v. *Storey*, [1911] 1 Ch. 18. Since a fraudulent appointment is not void but only voidable,[4] it follows that the appointee would take in constructive trust for the person entitled in default of appointment. The latter prevailed against the *bonâ fide* purchaser on the ground that his equitable right against the appointee was prior in time to the purchaser's equity against the trustee of the fund. Though in view of the English doctrine such a decision was to be expected,[5] it is to be observed that such a result is in conflict with the general principle that equity follows the law; for had the interest appointed been legal, the purchaser would have prevailed.[6] For it is fundamental that a *bonâ fide* purchaser of a legal interest takes free and clear of the equities of third persons.[7] Since the reason is that equity will not lend its aid to take from a person that which he has obtained for value and in good faith, it is hard to see why this salutary doctrine should not serve to protect other property rights besides legal interests. That it does do so would seem to be the true basis for the decisions in this country which hold, in opposition to the English view, that the

[1] Baillie *v.* M'Kewan, 35 Beav. 177.

[2] Cave *v.* Cave, 15 Ch. Div. 639.

[3] Moore *v.* Jervis, 2 Coll. 60; Cory *v.* Eyre, 1 De G., J. & S. 149. The protection afforded an assignee of a stock certificate, which is an apparent exception to this doctrine, is put on grounds of equitable estoppel. Dodds *v.* Hills, 2 Hem. & M. 424.

[4] In Green *v.* Pulsford, 2 Beav. 70, such an appointment of a legal interest was held only voidable. In Preston *v.* Preston, 21 L. T. Rep. N. S. 346, a fraudulent appointment of an equitable interest was held capable of confirmation by those entitled in default.

[5] This is the first decision in England on this point. Though the facts are similar in Daubeny *v.* Cockburn, 1 Meriv. 626, the decision there in favor of the person entitled in default was due to his having also the legal title to the trust fund.

[6] Green *v.* Pulsford, *supra*.

[7] Reynell *v.* Peacock, 2 Rolle 105; Molony *v.* Rourke, 100 Mass. 190.

assignee of a chose in action takes free and clear of the equities of third parties.[8] These cases have been explained on the ground that the assignee gets not only an equitable right to sue in his assignor's name, but also a legal right to collect, of which equity should not deprive him.[9] But the decisions do not turn on that theory, and it is submitted that when the interest assigned is purely equitable, as in the principal case, the same result should be reached.

WHETHER NEGLIGENT ACT OR DAMAGE CAUSED THEREBY CONSTITUTES CAUSE OF ACTION. — The larger body of authority goes to show that in an action for negligence the cause of action is the damage to the plaintiff caused by the defendant's negligence. Thus the Statute of Limitations runs only from the time when the damage occurred, not from the time of the negligent act.[1] A single act, by causing distinct damages to the plaintiff at different times, may give rise successively to more than one right of action.[2] And a leading case holds that a recovery for damage to property is not a bar to an action for personal injury caused simultaneously by the same negligent act.[3] On like reasoning the union of claims for damages to person and property, though caused by a single act, has been held a misjoinder of causes of action.[4]

On the other hand, two recent cases, examples of a considerable body of authority in this country, have been decided on the theory that the cause of action is not the violation of the plaintiff's right, but the defendant's "tortious act" or "wrong"; that there is, therefore, but one cause of action for the damage to both person and property. In one it was held that a judgment for the damage to property barred an action for the personal injury. *Ochs* v. *Public Service Ry. Co.*, 77 Atl. 533 (N. J., Sup. Ct.).[5] In the other the court overruled a motion to state separately the causes of action, both claims having been included in one count.

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[8] Kent, Ch., originated this theory by his *dicta* in Murray *v.* Lylburn, 2 Johns. Ch. (N. Y.) 441. Though repudiated in New York in Bush *v.* Lathrop, 22 N. Y. 535, his theory has generally prevailed in this country. Porter *v.* King, 1 Fed. 755. For a full collection of the authorities see 68 ALB. L. J. 290.

[9] See 1 HARV. L. REV. 1, 7, and 8.

[1] Roberts *v.* Read, 16 East 215. See Dyster *v.* Battye, 3 B. & Ald. 448. But the statute runs from the time when there is any damage which will support an action. Howell *v.* Young, 5 B. & C. 259; Moore *v.* Juvenal, 92 Pa. St. 484. *Cf.* Wood *v.* Carpenter, 101 U. S. 135.

[2] Backhouse *v.* Bonomi, 9 H. L. Cas. 503; Illinois Central R. Co. *v.* Wilbourn, 74 Miss. 284. *Cf.* Lee *v.* Kendall, 56 Hun (N. Y.) 610.

[3] Brunsden *v.* Humphrey, 14 Q. B. D. 141. *Accord*, Newbury *v.* Conn. & Pass. Rivers R. Co., 25 Vt. 377; Watson *v.* Texas & P. Ry. Co., 8 Tex. Civ. App. 144; Reilly *v.* Sicilian Asphalt Paving Co., 170 N. Y. 40. So also where one action is for injuries to the plaintiff, the other, his action for injuries to his wife. Skoglund *v.* Minneapolis Street Ry. Co., 45 Minn. 330; Texas & P. Ry. Co. *v.* Nelson, 9 Tex. Civ. App. 156. Or where one is case for damage to personalty, the other, case for damage to realty. Southside R. R. Co. *v.* Daniel, 20 Grat. (Va.) 344. Hagan *v.* Casey, 30 Wis. 553, goes too far in allowing two actions of trespass *quare clausum* where a single entry causes damage to realty and to personalty.

[4] Boerum *v.* Taylor, 19 Conn. 122; Townsend *v.* Coon, 7 N. Y. Civ. Proc. Rep. 56; Lamb *v.* Harbaugh, 105 Cal. 680.

[5] *Accord*, King *v.* Chicago, M. & St. P. Ry. Co., 80 Minn. 83.